

Notice of Allowability

Application No.

09/964,077

Examiner

Deborah K. Ware

Applicant(s)

DAFFUNCHIO ET AL.

Art Unit

1651

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to October 2003.
2. ☒ The allowed claim(s) is/are 1,6-11,16,17 and 23-30.
3. ☐ The drawings filed on _____ are accepted by the Examiner.
4. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) ☐ All b) ☐ Some* c) ☐ None of the:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

* Certified copies not received: _____.
5. ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
 - (a) ☐ The translation of the foreign language provisional application has been received.
6. ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application. **THIS THREE-MONTH PERIOD IS NOT EXTENDABLE**

7. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
8. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
 - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
 - 1) ☐ hereto or 2) ☐ to Paper No. _____.
 - (b) ☐ including changes required by the proposed drawing correction filed _____, which has been approved by the Examiner.
 - (c) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No. _____.

Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the margin according to 37 CFR 1.121(d).

9. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

- | | |
|--|---|
| 1 <input type="checkbox"/> Notice of References Cited (PTO-892) | 5 <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 2 <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 6 <input checked="" type="checkbox"/> Interview Summary (PTO-413), Paper No. _____. |
| 3 <input type="checkbox"/> Information Disclosure Statements (PTO-1449 or PTO/SB/08), Paper No. _____ | 7 <input checked="" type="checkbox"/> Examiner's Amendment/Comment |
| 4 <input type="checkbox"/> Examiner's Comment Regarding Requirement for Deposit of Biological Material | 8 <input type="checkbox"/> Examiner's Statement of Reasons for Allowance |
| | 9 <input type="checkbox"/> Other |

EXAMINER'S AMENDMENT

Election/Restrictions

Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 1, 6-11, 16-17 and newly added 23-30, drawn to a method of biocontrol of horn flies, classified in class 424, subclass 405.
- II. Claim 19, drawn to a system for a fly of varied types classified in class 435, subclass 283.1.
- III. Claim 20, drawn to a method for controlling flies, classified in class 449, subclass 3.

The inventions are distinct, each from the other because of the following reasons:

Group I is distinct and different from the system of Group II in that a system is not required for carrying out the method of Group I and the system does not require the specific wasp species of Group I. The Group I is different and distinct from Group III in that the process steps are different with respect to the order of how they are carried out and further because the wasp species of Group I is not required of Group III. Also Group III and II are different and distinct from one another since the sytem may be comprised by more than one type of fly, which even includes the house fly, thus the method of Group III could not be applied with the system of Group II. Two-way distinctness appears to exist between each group and the restriction appears proper because examination which includes the search of Group II and III would be required to be different for these two groups.

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Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.

Because these inventions are distinct for the reasons given above and the search required for Group I is not required for Group II or III, restriction for examination purposes as indicated is proper.

During a telephone conversation with Larry Crain on January 22, 2004 a provisional election was made without traverse to prosecute the invention of I, claims 1, 6-11, 16-17 and newly added 23-30. Claims 19-20 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention and will be canceled by examiner's amendment to put invention of I into condition for allowance.

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

changes by examiner's amendment

An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided

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by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with Larry Crain on January 22, 2004.

The application has been amended as follows:

In the abstract

Line 1, after "method" inserted --is provided--,

Line 2, after "livestock" inserted -- . -- and deleted "the" and inserted --
The--and further deleted "comprising" and inserted --includes--,

Line 5, after "flies" inserted -- . --,

Line 6, deleted "and placing a" and inserted --A--and after "wasps"
inserted --is placed-- .

In the claims

Claim 1, line 2, deleted "(" and ")" and before "Haematobia" inserted --of
the species--,

Line 12, before "wasps" inserted --said--;

Claim 6, line 3, before "wasps" inserted --said--and after "placing" deleted
"at least a ratio of" and inserted --one honey comb device per about--,

Line 4, before "25" inserted --about--and deleted "of the
honeycomb devices per animal" and inserted --animals--;

Claim 7, line 1, before "horn" inserted --target--,

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Line 3, before "comprises" inserted --containing a number of said wasps--and after "placing" deleted "at least from" and inserted --one honey comb device per--and further after "about 20" deleted "honeycomb devices per animal" and inserted --animals--;

Claim 8, line 1, before "horn" inserted --target--,

, line 3, before "wasps" inserted --said--and after "placing" deleted "at least from" and inserted --one honey comb device per-- ,

line 4, deleted "wasps honeycomb devices per animal" and inserted --animals-- ;

Claim 9, line 2, before "wasps" inserted --said--;

Claim 10, line 2, before "wasps" inserted --said--,

line 3, deleted "essentially";

Claim 16, line 2, before "wasps" inserted --said--;

Claim 17, line 2, before "wasps" inserted --said--and further deleted "the" and inserted --a--;

Claim 19, canceled;

Claim 20, canceled;

Claim 23, line 2, before "wasps" inserted --said--;

Claim 24, line 2, before "wasps" inserted --said--;

Claim 25, line 2, before "wasps" inserted --said--;

Claim 26, line 2, before "wasps" inserted --said--;

Claim 27, line 2, before "wasps" inserted --said--;

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Claim 28, line 2, before "wasps" inserted --said--;


Claim 29, line 2, before "wasps" inserted --said--and further deleted "the"
and inserted --a--;

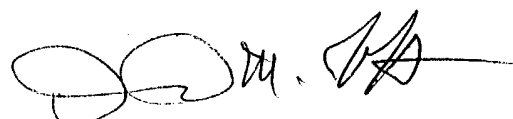
Claim 30, line 2, before "wasps" inserted --said--and further deleted "the"
and inserted --a--.

Any inquiry concerning this communication or earlier communications from the
examiner should be directed to Deborah K. Ware whose telephone number 571-272-
0924. The examiner can normally be reached on 9:30-6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's
supervisor, Mike Wityshyn can be reached on 571-272-0926. The fax phone number
for the organization where this application or proceeding is assigned is (703)872-9306.

Any inquiry of a general nature or relating to the status of this application or
proceeding should be directed to the receptionist whose telephone number is 308-0196.


Deborah K. Ware
January 24, 2004


DAVID M. NAFF
PRIMARY EXAMINER
ART UNIT 1651